Supreme Court, U.S.
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(2)

No. 94-2041

In The

Supreme Court of the United States

October Term, 1994

SANITARY AND IMPROVEMENT DISTRICT NO. 210 OF DOUGLAS COUNTY, NEBRASKA,

Petitioner,

vs.

THE CITY OF OMAHA, NEBRASKA, a Municipal Corporation; MAYOR P.J. MORGAN, successor to MAYOR BERNIE SIMON; STEVE EXON; FRED CONLEY; JOSEPH FRIEND; STEVE TOMASEK; LEE TERRY; RICHARD TAKECHI; and SUBBY ANZALDO, all as Council Members of the City of Omaha,

Respondents.

Petition For Writ Of Certiorari To The Nebraska Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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5 pp

NEBRASKA STATUTE

Neb.Rev.Stat. § 31-765

31-765. Annexation; when effective; trustees; administrator; duties; special assessments prohibited. The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district; *Provided*, if the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

STATEMENT OF FACTS

The Petitioner/Appellant, Sanitary and Improvement District 210, appealed the Douglas County District Court's decision in favor of the Appellee, the City of Omaha, in this case to the Nebraska Court of Appeals. On December 20, 1994, the Nebraska Court of Appeals affirmed the decision of the Douglas County District Court. Appellant then petitioned the Nebraska Supreme Court for further review of the case. On March 15, 1995, the Nebraska Supreme Court overruled Appellant's Petition for Further Review, and on March 23, 1995, the Court of Appeals issued a mandate to the Douglas County

District Court. On March 24, 1995, the Appellant filed with the Nebraska Supreme Court a Motion for Rehearing. On March 24, 1995 Douglas County District Court Judge Robert Burkhard entered a judgment pursuant to the mandate. The effect of this judgment was that it allowed the City of Omaha to annex the SID 210 area. On March 27, 1995, the City of Omaha began providing fire, police, garbage and other city services to the former SID 210 area. On March 27, 1995, the Nebraska Supreme Court overruled a Motion to Recall the Mandate issued by the Court of Appeals. On April 7, 1995, the Nebraska Supreme Court overruled Appellant's Motion to Stay Mandate for lack of jurisdiction.

ARGUMENT IN OPPOSITION TO GRANTING WRIT

The only Petitioner is Sanitary and Improvement District No. 210 of Douglas County, Nebraska ("SID 210"). SID 210 was a taxing subdivision that existed for the purpose of installing and maintaining certain public improvements. The Nebraska Court of Appeals, in its opinion in this case, states, as follows:

> "[6] With regard to SID No. 210, the district court correctly held that it lacked standing, for not only does a corporation have no right to vote, but, upon annexation, it will be dissolved. However, with regard to the individual plaintiffs who are residents of the district, we believe that the issue is more properly one of ripeness."
>
> "In the present case, the individual plaintiffs seek to enjoin the enforcement of the annexation ordinance before SID No. 210 is even

> assigned to a city council voting district. We will not know how the individual plaintiffs' voting rights stack up vis-a-vis those of other Omaha residents until annexation occurs. We conclude that this issue does not present the required element of a controversy, and we therefore reject this assigned error."

On March 24, 1995, the District Court of Douglas County, Nebraska, entered final judgment in favor of the City of Omaha pursuant to mandate from the Nebraska Court of Appeals. By operation of law under Neb. Rev. Stat. § 31-765, SID No. 210 was dissolved on April 24, 1995. The petitioner lacks any corporate existence to make application to this Court.

CONCLUSION

City of Omaha prays that this Court deny the Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, because SID 210 no longer exists and because the lower courts' holdings were not in error.

Respectfully submitted,

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APPENDIX

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
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April 14, 1995

James D. Sherrets
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IN CASE OF: A-92-0965, Sanitary Improvement Dist. No. 210 of Douglas County v. City of Omaha

Applt Mot to Stay Mandate/Federal Quest **filed** 04/07/95 **has been reviewed by the court and the following order entered**: Motion overruled for lack of jurisdiction.

Respectfully,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS